

Introduced by Senator Padilla

February 24, 2012

An act to amend ~~Section 435~~ Sections 44936, 44938, 44939, 44940, and 44944 of the Education Code, relating to ~~pupils~~ school employees.

LEGISLATIVE COUNSEL'S DIGEST

SB 1530, as amended, Padilla. ~~Pupils: English learners. School employees: dismissal, suspension, and leave of absence procedures.~~

(1) Under existing law, a permanent school employee is prohibited from being dismissed, except for one or more of certain enumerated causes, including for immoral or unprofessional conduct and unsatisfactory performance. Upon a charging that there exists cause for the dismissal or suspension of a permanent employee, existing law authorizes the governing board of a school district to give notice to the employee of its intention to dismiss or suspend the employee, as specified. Existing law prohibits the governing board of a school district from giving notice of dismissal or suspension of a permanent employee between May 15 and September 15 of any year.

This bill would except from that prohibition of giving notice between those dates, proceedings where the charges involve specified offenses.

(2) Existing law prohibits the governing board of any school district from acting upon charges of unprofessional conduct or unsatisfactory performance against an employee unless the employee is given written notice of the unprofessional conduct or unsatisfactory performance, as provided.

This bill would delete the provision that prohibits the governing board from acting upon charges of unprofessional conduct, as specified.

(3) Existing law authorizes the governing board of a school district to immediately suspend a permanent employee under specified conditions, including immoral conduct, and give the employee notice of the suspension, as specified.

This bill would include unprofessional conduct within the conditions that a governing board may immediately suspend a permanent employee.

(4) Existing law provides that a certificated employee may be charged with a mandatory leave of absence offense for certain specified sex offenses or controlled substance offenses with the exception of marijuana, mescaline, peyote, or tetrahydrocannabinols. Existing law also provides that a certificated employee may be charged with an optional leave of absence offense for certain offenses, including controlled substance offenses, as specified, with the exception of marijuana, mescaline, peyote, or tetrahydrocannabinols. Existing law requires the governing board of a school district to immediately place a certificated employee on compulsory leave of absence if the employee is charged with a mandatory leave of absence offense.

This bill would remove marijuana, mescaline, peyote, and tetrahydrocannabinols as exceptions to the controlled substance offenses for which a certificated employee may be charged with a mandatory leave of absence offense or an optional leave of absence offense.

Because this bill would increase the number of employees subject to immediate placement on compulsory leave of absence, thereby increasing the duties of school districts, the bill would impose a state-mandated local program.

(5) Existing law requires that a requested hearing on the dismissal or suspension of a permanent employee be conducted by a Commission on Professional Competence, as specified, and provides that the decision of the commission is deemed to be the final decision of the governing board of a school district. Existing law prohibits testimony from being given and evidence from being introduced relating to matters that occurred more than 4 years prior to the filing of the notice, and prohibits a decision relating to the dismissal or suspension of an employee from being made based on charges or evidence relating to matters that occurred more than 4 years before the filing of the notice of charges for the dismissal or suspension of the employee.

This bill would require the Commission on Professional Competence, for hearings on the dismissal or suspension of a permanent employee that involve certain sex offenses, controlled substance offenses, or child abuse offenses, as specified, to consist of an administrative law judge

of the Office of Administrative Hearings and would provide that the decision of the commission related to these specified offenses would be advisory in nature to the governing board. The bill would exempt hearings that involve these specified offenses from the prohibition on giving testimony and introducing evidence relating to matters that occurred more than 4 years before the date of the filing of the notice, and would, for hearings that involve the specified offenses, permit a decision relating to the dismissal or suspension of an employee to be made based on charges or evidence related to matters occurring more than 4 years before the date of the filing of the notice of charges for the dismissal or suspension of the employee.

(6) This bill also would make nonsubstantive and conforming changes to these provisions.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~The English Learner and Immigrant Pupil Federal Conformity Act requires a local educational agency to provide instructional services to limited-English-proficient pupils and immigrant pupils in conformity with specified provisions of federal law. Existing law defines the term “English learner” for purposes of these provisions.~~

~~This bill would additionally define the terms “long-term English learner” and “reclassified English proficient” and would declare the intent of the Legislature to enact legislation that would require the State Department of Education to provide information regarding long-term English learners and reclassified English-proficient pupils.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 44936 of the Education Code is amended
- 2 to read:
- 3 44936. The notice of dismissal or suspension in a proceeding
- 4 initiated pursuant to Section 44934 shall not be given between

1 May ~~15th~~ 15 and September ~~15th~~ in any year 15, except in
2 proceedings where the charges involve any offense as defined in
3 Sections 44010 and 44011 of this code, and Sections 11165.2 to
4 11165.6, inclusive, of the Penal Code. ~~It~~ The notice shall be in
5 writing and be served upon the employee personally or by United
6 States registered mail addressed to him or her at ~~his~~ the employee's
7 last known address. A copy of the charges filed, containing the
8 information required by Section 11503 of the Government Code,
9 together with a copy of the provisions of this article, shall be
10 attached to the notice.

11 SEC. 2. Section 44938 of the Education Code is amended to
12 read:

13 ~~44938. (a) The governing board of any school district shall~~
14 ~~not act upon any charges of unprofessional conduct unless at least~~
15 ~~45 calendar days prior to the date of the filing, the board or its~~
16 ~~authorized representative has given the employee against whom~~
17 ~~the charge is filed, written notice of the unprofessional conduct,~~
18 ~~specifying the nature thereof with such specific instances of~~
19 ~~behavior and with such particularity as to furnish the employee an~~
20 ~~opportunity to correct his or her faults and overcome the grounds~~
21 ~~for the charge. The written notice shall include the evaluation made~~
22 ~~pursuant to Article 11 (commencing with Section 44660) of~~
23 ~~Chapter 3, if applicable to the employee.~~

24 ~~(b)~~
25 44938. (a) The governing board of ~~any~~ a school district shall
26 not act upon any charges of unsatisfactory performance unless it
27 acts in accordance with the provisions of paragraph (1) or (2):

28 (1) At least 90 calendar days ~~prior to~~ before the date of the filing,
29 the governing board or its authorized representative has given the
30 employee against whom the charge is filed; written notice of the
31 unsatisfactory performance; specifying the nature thereof with
32 such specific instances of behavior and with such particularity as
33 to furnish the employee an opportunity to correct his or her faults
34 and overcome the grounds for the charge. The written notice shall
35 include the evaluation made pursuant to Article 11 (commencing
36 with Section 44660) of Chapter 3, if applicable to the employee.

37 (2) The governing board may act during the time period
38 composed of the last one-fourth of the schooldays it has scheduled
39 for purposes of computing apportionments in any fiscal year if,
40 ~~prior to~~ before the beginning of that time period, the governing

board or its authorized representative has given the employee against whom the charge is filed; written notice of the unsatisfactory performance; specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct his or her faults and overcome the grounds for the charge. The written notice shall include the evaluation made pursuant to Article 11 (commencing with Section 44660) of Chapter 3, if applicable to the employee.

(e)

(b) “Unsatisfactory performance” as used in this section means, and refers only to, the unsatisfactory performance particularly specified as a cause for dismissal in Section 44932 and does not include any other cause for dismissal specified in Section 44932.

~~“Unprofessional conduct” as used in this section means, and refers to, the unprofessional conduct particularly specified as a cause for dismissal or suspension in Sections 44932 and 44933 and does not include any other cause for dismissal specified in Section 44932.~~

SEC. 3. Section 44939 of the Education Code is amended to read:

44939. (a) Upon the filing of written charges, duly signed and verified by the person filing them with the governing board of a school district, or upon a written statement of charges formulated by the governing board, charging a permanent employee of the district with immoral *or unprofessional* conduct, conviction of a felony or of any crime involving moral turpitude, with incompetency due to mental disability, with willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district, with violation of Section 51530, with knowing membership by the employee in the Communist Party or with violation of any provision in Sections 7001 to 7007, inclusive, the governing board may, if it deems such action necessary, immediately suspend the employee from his *or her* duties and give notice to ~~him~~ *the employee* of his *or her* suspension, and that 30 days after service of the notice, ~~he~~ *the employee* will be dismissed, unless he *or she* demands a hearing.

If

(b) *If* the permanent employee is suspended upon charges of knowing membership by the employee in the Communist Party or

1 for ~~any~~ violation of Section 7001, 7002, 7003, 7006, 7007, or
2 51530, ~~he the employee~~ may within 10 days after service upon him
3 or her of notice of such suspension file with the governing board
4 a verified denial, in writing, of the charges. In such event the
5 permanent employee who demands a hearing within the 30-day
6 period shall continue to be paid his or her regular salary during
7 the period of suspension and until the entry of the decision of the
8 Commission on Professional Competence, if and during such time
9 as ~~he the employee~~ furnishes to the school district a suitable bond,
10 or other security acceptable to the governing board, as a guarantee
11 that the employee will repay to the school district the amount of
12 salary so paid to him or her during the period of suspension in
13 case the decision of the Commission on Professional Competence
14 is that ~~he the employee~~ shall be dismissed. If it is determined that
15 the employee may not be dismissed, the school board shall
16 reimburse the employee for the cost of the bond.

17 SEC. 4. Section 44940 of the Education Code is amended to
18 read:

19 44940. (a) For purposes of this section, “charged with a
20 mandatory leave of absence offense” is defined to mean charged
21 by complaint, information, or indictment filed in a court of
22 competent jurisdiction with the commission of ~~any a~~ sex offense
23 as defined in Section 44010, or with the commission of ~~any an~~
24 offense involving aiding or abetting the unlawful sale, use, or
25 exchange to minors of controlled substances listed in Schedule I,
26 II, or III, as contained in ~~Section Sections~~ 11054, 11055, and 11056
27 of the Health and Safety Code, ~~with the exception of marijuana,~~
28 ~~mescaline, peyote, or tetrahydrocannabinols.~~

29 (b) For purposes of this section, “charged with an optional leave
30 of absence offense” is defined to mean a charge by complaint,
31 information, or indictment filed in a court of competent jurisdiction
32 with the commission of ~~any a~~ controlled substance offense as
33 defined in Section 44011 or 87011, or a violation or attempted
34 violation of Section 187 of the Penal Code, ~~or Sections~~ 11357 to
35 11361, inclusive, or Section 11363, 11364, or 11370.1 of the
36 Health and Safety Code, insofar as these sections relate to ~~any~~
37 controlled substances ~~except marijuana, mescaline, peyote, or~~
38 ~~tetrahydrocannabinols.~~

39 (c) For purposes of this section and Section 44940.5, the term
40 “school district” includes county offices of education.

(d) (1) ~~Whenever any~~ *If a* certificated employee of a school district is charged with a mandatory leave of absence offense, as defined in subdivision (a), upon being informed that a charge has been filed, the governing board of the school district shall immediately place the employee on compulsory leave of absence. The duration of the leave of absence shall be until a time not more than 10 days after the date of entry of the judgment in the proceedings. No later than 10 days after receipt of the complaint, information, or indictment described by subdivision (a), the school district shall forward a copy to the Commission on Teacher Credentialing.

(2) Upon receiving a copy of a complaint, information, or indictment described in subdivision (a) and forwarded by ~~a the~~ school district, the Commission on Teacher Credentialing shall automatically suspend the employee's teaching or service credential. The duration of the suspension shall be until a time not more than 10 days after the date of entry of the judgment in the proceedings.

(e) (1) ~~Whenever any~~ *If a* certificated employee of a school district is charged with an optional leave of absence offense, as defined in subdivision (b), the governing board of the school district may immediately place the employee ~~upon~~ *on* compulsory leave in accordance with the procedure in this section and Section 44940.5. ~~If any~~ *If a* certificated employee is charged with an offense deemed to fall into both the mandatory and the optional leave of absence categories, as defined in subdivisions (a) and (b), that offense shall be treated as a mandatory leave of absence offense for purposes of this section. No later than 10 days after receipt of the complaint, information, or indictment described by subdivision (a), the school district shall forward a copy to the Commission on Teacher Credentialing.

(2) Upon receiving a copy of a complaint, information, or indictment described in subdivision (a) and forwarded by ~~a the~~ school district, the Commission on Teacher Credentialing shall automatically suspend the employee's teaching or service credential. The duration of the suspension shall be until a time not more than 10 days after the date of entry of the judgment in the proceedings.

SEC. 5. Section 44944 of the Education Code is amended to read:

1 44944. (a) (1) In a dismissal or suspension proceeding initiated
2 pursuant to Section 44934, if a hearing is requested by the
3 employee, the hearing shall be commenced within 60 days from
4 the date of the employee's demand for a hearing. The hearing shall
5 be initiated, conducted, and a decision made in accordance with
6 Chapter 5 (commencing with Section 11500) of Part 1 of Division
7 3 of Title 2 of the Government Code. However, the hearing date
8 shall be established after consultation with the employee and the
9 governing board, or their representatives, and the Commission on
10 Professional Competence shall have all of the power granted to
11 an agency in that chapter, except that the right of discovery of the
12 parties shall not be limited to those matters set forth in Section
13 11507.6 of the Government Code but shall include the rights and
14 duties of any party in a civil action brought in a superior court
15 under Title 4 (commencing with Section 2016.010) of Part 4 of
16 the Code of Civil Procedure. Notwithstanding any provision to the
17 contrary, and except for the taking of oral depositions, no discovery
18 shall occur later than 30 calendar days after the employee is served
19 with a copy of the accusation pursuant to Section 11505 of the
20 Government Code. In all cases, discovery shall be completed prior
21 to seven calendar days before the date upon which the hearing
22 commences. If any continuance is granted pursuant to Section
23 11524 of the Government Code, the time limitation for
24 commencement of the hearing as provided in this subdivision shall
25 be extended for a period of time equal to the continuance. However,
26 the extension shall not include that period of time attributable to
27 an unlawful refusal by either party to allow the discovery provided
28 for in this section.

29 (2) If the right of discovery granted under paragraph (1) is
30 denied by either the employee or the governing board, all of the
31 remedies in Chapter 7 (commencing with Section 2023.010) of
32 Title 4 of Part 4 of the Code of Civil Procedure shall be available
33 to the party seeking discovery and the court of proper jurisdiction,
34 to entertain his or her motion, shall be the superior court of the
35 county in which the hearing will be held.

36 (3) The time periods in this section and of Chapter 5
37 (commencing with Section 11500) of Part 1 of Division 3 of Title
38 2 of the Government Code and of Title 4 (commencing with
39 Section 2016.010) of Part 4 of the Code of Civil Procedure shall

1 not be applied so as to deny discovery in a hearing conducted
2 pursuant to this section.

3 (4) The superior court of the county in which the hearing will
4 be held may, upon motion of the party seeking discovery, suspend
5 the hearing so as to comply with the requirement of the preceding
6 paragraph.

7 (5) ~~No~~-(A) A witness shall *not* be permitted to testify at the
8 hearing except upon oath or affirmation. ~~No testimony~~

9 (B) *Except for hearings that involve any offense as defined in*
10 *Sections 44010 and 44011 of this code, and Sections 11165.2 to*
11 *11165.6, inclusive, of the Penal Code:*

12 (i) *Testimony* shall *not* be given or evidence introduced relating
13 to matters that occurred more than four years ~~prior to~~ *before* the
14 date of the filing of the notice. ~~Evidence~~

15 (ii) *Evidence* of records regularly kept by the governing board
16 concerning the employee may be introduced, but no decision
17 relating to the dismissal or suspension of ~~any~~ *an* employee shall
18 be made based on charges or evidence of any nature relating to
19 matters occurring more than four years ~~prior to~~ *before* the filing
20 of the notice.

21 (b) ~~(4)~~ The hearing provided for in this section shall be
22 conducted by a Commission on Professional Competence. ~~One as~~
23 *follows:*

24 (1) *The Commission on Professional Competence shall consist*
25 *of an administrative law judge of the Office of Administrative*
26 *Hearings for a hearing that involves any offense as defined in*
27 *Sections 44010 and 44011 of this code, and Sections 11165.2 to*
28 *11165.6, inclusive, of the Penal Code.*

29 (2) *The Commission on Professional Competence shall be*
30 *comprised as follows for hearings not specified in paragraph (1):*

31 (A) *One* member of the commission shall be selected by the
32 employee, one member shall be selected by the governing board,
33 and one member shall be an administrative law judge of the Office
34 of Administrative Hearings who shall be chairperson and a voting
35 member of the commission and shall be responsible for assuring
36 that the legal rights of the parties are protected at the hearing. If
37 either the governing board or the employee for any reason fails to
38 select a commission member at least seven calendar days ~~prior to~~
39 *before* the date of the hearing, the failure shall constitute a waiver
40 of the right to selection, and the county board of education or its

1 specific designee shall immediately make the selection. If the
2 county board of education is also the governing board of the school
3 district or has by statute been granted the powers of a governing
4 board, the selection shall be made by the Superintendent, who shall
5 be reimbursed by the school district for all costs incident to the
6 selection.

7 ~~(2)~~

8 (B) The member selected by the governing board and the
9 member selected by the employee shall not be related to the
10 employee and shall not be employees of the district initiating the
11 dismissal or suspension and shall hold a currently valid credential
12 and have at least five years' experience within the past 10 years
13 in the discipline of the employee.

14 (c) (1) The decision of the Commission on Professional
15 Competence shall be made by a majority vote, and the commission
16 shall prepare a written decision containing findings of fact,
17 determinations of issues, and a disposition that shall be, solely,
18 one of the following:

19 (A) That the employee should be dismissed.

20 (B) That the employee should be suspended for a specific period
21 of time without pay.

22 (C) That the employee should not be dismissed or suspended.

23 (2) The decision of the Commission on Professional Competence
24 that the employee should not be dismissed or suspended shall not
25 be based on nonsubstantive procedural errors committed by the
26 school district or governing board unless the errors are prejudicial
27 errors.

28 (3) The commission shall not have the power to dispose of the
29 charge of dismissal by imposing probation or other alternative
30 sanctions. The imposition of suspension pursuant to subparagraph
31 (B) of paragraph (1) shall be available only in a suspension
32 proceeding authorized pursuant to subdivision (b) of Section 44932
33 or Section 44933.

34 (4) The decision of the Commission on Professional Competence
35 shall be deemed to be the final decision of the governing board.
36 *However, the decision of the Commission on Professional*
37 *Competence shall be deemed to be advisory in nature to the*
38 *governing board with respect to hearings that involve any offense*
39 *as defined in Sections 44010 and 44011 of this code, and Sections*
40 *11165.2 to 11165.6, inclusive, of the Penal Code.*

1 (5) The *governing* board may adopt from time to time rules and
2 procedures not inconsistent with this section as may be necessary
3 to effectuate this section.

4 (6) The governing board and the employee shall have the right
5 to be represented by counsel.

6 (d) (1) If the member selected by the governing board or the
7 member selected by the employee is employed by ~~any~~ a school
8 district in this state, the member shall, during ~~any~~ service on a
9 Commission on Professional Competence, continue to receive
10 salary, fringe benefits, accumulated sick leave, and other leaves
11 and benefits from the district in which the member is employed,
12 but shall receive no additional compensation or honorariums for
13 service on the commission.

14 (2) If service on a Commission on Professional Competence
15 occurs during summer recess or vacation periods, the member shall
16 receive compensation proportionate to that received during the
17 current or immediately preceding contract period from the
18 member's employing district, whichever amount is greater.

19 (e) (1) If the Commission on Professional Competence
20 determines that the employee should be dismissed or suspended,
21 the governing board and the employee shall share equally the
22 expenses of the hearing, including the cost of the administrative
23 law judge. The state shall pay any costs incurred under paragraph
24 (2) of subdivision (d), the reasonable expenses, as determined by
25 the administrative law judge, of the member selected by the
26 governing board and the member selected by the employee,
27 including, but not limited to, payments or obligations incurred for
28 travel, meals, and lodging, and the cost of the substitute or
29 substitutes, if any, for the member selected by the governing board
30 and the member selected by the employee. The Controller shall
31 pay all claims submitted pursuant to this paragraph from the
32 General Fund, and may prescribe reasonable rules, regulations,
33 and forms for the submission of the claims. The employee and the
34 governing board shall pay their own attorney's fees.

35 (2) If the Commission on Professional Competence determines
36 that the employee should not be dismissed or suspended, the
37 governing board shall pay the expenses of the hearing, including
38 the cost of the administrative law judge, any costs incurred under
39 paragraph (2) of subdivision (d), the reasonable expenses, as
40 determined by the administrative law judge, of the member selected

1 by the governing board and the member selected by the employee,
2 including, but not limited to, payments or obligations incurred for
3 travel, meals, and lodging, the cost of the substitute or substitutes,
4 if any, for the member selected by the governing board and the
5 member selected by the employee, and reasonable attorney's fees
6 incurred by the employee.

7 (3) As used in this section, "reasonable expenses" shall not be
8 deemed "compensation" within the meaning of subdivision (d).

9 (4) If either the governing board or the employee petitions a
10 court of competent jurisdiction for review of the decision of the
11 commission, the payment of expenses to members of the
12 commission required by this subdivision shall not be stayed.

13 (5) (A) If the decision of the commission is finally reversed or
14 vacated by a court of competent jurisdiction, either the state, having
15 paid the commission members' expenses, shall be entitled to
16 reimbursement from the governing board for those expenses, or
17 the governing board, having paid the expenses, shall be entitled
18 to reimbursement from the state.

19 (B) Additionally, either the employee, having paid a portion of
20 the expenses of the hearing, including the cost of the administrative
21 law judge, shall be entitled to reimbursement from the governing
22 board for the expenses, or the governing board, having paid its
23 portion and the employee's portion of the expenses of the hearing,
24 including the cost of the administrative law judge, shall be entitled
25 to reimbursement from the employee for that portion of the
26 expenses.

27 (f) The hearing provided for in this section shall be conducted
28 in a place selected by agreement among the members of the
29 commission. In the absence of agreement, *and for hearings*
30 *conducted pursuant to paragraph (1) of subdivision (b)*, the place
31 shall be selected by the administrative law judge.

32 *SEC. 6. If the Commission on State Mandates determines that*
33 *this act contains costs mandated by the state, reimbursement to*
34 *local agencies and school districts for those costs shall be made*
35 *pursuant to Part 7 (commencing with Section 17500) of Division*
36 *4 of Title 2 of the Government Code.*

37 ~~SECTION 1. Section 435 of the Education Code is amended~~
38 ~~to read:~~

39 ~~435. For purposes of this chapter, the following terms have the~~
40 ~~following meanings:~~

1 (a) ~~“English learner” or “pupil of limited English proficiency”~~
2 ~~means a pupil who was not born in the United States or whose~~
3 ~~native language is a language other than English or who comes~~
4 ~~from an environment where a language other than English is~~
5 ~~dominant; and whose difficulties in speaking, reading, writing, or~~
6 ~~understanding the English language may be sufficient to deny the~~
7 ~~individual the ability to meet the state’s proficient level of~~
8 ~~achievement on state assessments, the ability to successfully~~
9 ~~achieve in classrooms where the language of instruction is English,~~
10 ~~or the opportunity to participate fully in society.~~

11 (b) ~~“Federal No Child Left Behind Act of 2001” means Public~~
12 ~~Law 107-110 (20 U.S.C. Sec. 6801 et seq.).~~

13 (c) ~~“Immigrant pupil” means a pupil who was born in a country~~
14 ~~other than the United States and who has attended a kindergarten~~
15 ~~class or any of grades 1 to 12, inclusive, in a school in the United~~
16 ~~States for three or fewer years.~~

17 (d) ~~“Long-term English learner” means a pupil in any of grades~~
18 ~~7 to 12, inclusive, who has been an English learner for six years~~
19 ~~or more.~~

20 (e) ~~“Reclassified English proficient” means an English learner~~
21 ~~who has been redesignated as English proficient pursuant to Section~~
22 ~~313.~~

23 SEC. 2. ~~It is the intent of the Legislature to enact legislation~~
24 ~~that would require the State Department of Education to provide~~
25 ~~information regarding long-term English learners and~~
26 ~~reclassified English-proficient pupils.~~